

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD**

NOTICE OF FINAL RULEMAKING

The Alcoholic Beverage Control Board ("Board"), pursuant to the authority set forth in D.C. Official Code § 25-351(a) (2001) and Section 303 of Title 23 of the District of Columbia Municipal Regulations ("DCMR"), 51 DCR 4309 (April 30, 2004), hereby gives notice of the adoption of the following final rules that replace existing section 304 of Title 23 DCMR with a new section 304 that imposes a three (3) year moratorium on the issuance of any new retailer's license class CN, CT, CX, DN, DT, and DX in a portion of Adams Morgan which shall be known as the Adams Morgan Moratorium Zone. The final rules were adopted by the Board on April 6, 2005. The text of these final rules is substantively identical to the text of the notice of emergency and proposed rulemaking published in the D.C. Register on September 3, 2004 at 51 DCR 8669.

The Board conducted a public hearing, pursuant to D.C. Official Code § 25-354 (2001), on July 7, 2004 to consider the written request of the Kalorama Citizens Association ("KCA") and the Reed-Cooke Neighborhood Association ("RCNA") to extend and modify the current Adams Morgan Moratorium Zone for a five year period. The Board received a significant amount of detailed testimony and comments, both in favor and in opposition to the moratorium proposal submitted by the KCA and RCNA, including comments from Ward One Councilmember Jim Graham, Advisory Neighborhood Commission ("ANC") 1C, the Metropolitan Police Department ("MPD"), the Adams Morgan Community Association ("AMCA"), the Coalition of Latino Business, the Adams Morgan Business and Professional Association, the Coalition of Concerned Adams Morgan Commercial Property Owners, as well as numerous District of Columbia residents and other District of Columbia organizations. The Board found the testimony provided by the KCA and RCNA to warrant an extension of the moratorium on any new retailer's licenses class CN, CT, CX, DN, DT and DX based upon the appropriateness standards set forth in D.C. Official Code §§ 25-313(b) (2001).

In reaching its decision, the Board gave great weight to the written recommendations of ANC 1C as required by section 13(d)(3) of the Advisory Neighborhood Councils Act of 1975, effective October 10, 1975, D.C. Law 1-21, D.C. Official Code § 1-309.10(d)(3) (2001), as amended, and D.C. Official Code § 25-609 (2001). ANC 1C voted to reject the petition filed by the KCA and RCNA by a 4-3 vote taken at its monthly business meeting on May 5, 2004. The ANC 1C Resolution, in opposing the written request of the KCA and RCNA, stated that the current moratorium has failed to reduce vehicular or pedestrian traffic, make parking more available, clean up trash, reduce the rodent population, reduce noise, or promote desirable retail uses in the community. However, pursuant to subsection 303.1 of Title 23 DCMR (2004), the Board in rendering its decision on a moratorium request is required to determine whether the present conditions in the moratorium area – after considering the appropriateness standards set forth in D.C. Official Code §§ 25-313 and 25-314 (2001) – justify an extension of the moratorium, notwithstanding any perceived failures or successes of the previous moratorium. As

discussed below, the Board did find merit based upon the testimony and comments it received from ANC 1C regarding the need to promote desirable retail uses in the Adams Morgan Moratorium Zone. However, in considering the appropriateness standards set forth in D.C. Official Code §§ 25-313(b) (2001), the Board found the testimony and evidence put forward by the KCA, RCNA, Councilmember Jim Graham, and individual citizens of Adams Morgan to reveal that significant problems with peace, order, and quiet, particularly with respect to noise, litter, disorderly conduct, crowd control, and vehicular and pedestrian safety, as well as parking problems to still exist during late evening hours in the Adams Morgan Moratorium Zone. Additionally, the testimony provided by MPD revealed a number of significant public safety issues, including a large number of calls for police service and traffic congestion problems caused by patrons of ABC establishments in the Adams Morgan Moratorium Zone. While the Board recognizes the vibrant late night activity which continues to attract patrons to Adams Morgan, the Board is also responsible for addressing the concerns of Adams Morgan residents, which based upon the submitted testimony and evidence, endure late at night: loud noise, the disorderly departure of some patrons of ABC establishments, a variety of parking and vehicular and pedestrian safety problems, and excessive amounts of litter throughout neighborhood streets, including pizza paper plates, which are often from patrons of ABC establishments. As a result, the Board decided to continue the restriction on the issuance of new tavern and nightclub licenses within the Adams Morgan Moratorium Zone. The Board is also prohibiting the issuance of new class CX and DX, club and multipurpose facility licenses, which could also negatively impact upon peace, order, and quiet in the Adams Morgan Moratorium Zone by operating late at night without any statutory food service requirements.

While the Board found that the KCA and RCNA established the need for a moratorium on the issuance of new class CN, CT, CX, DN, DT, and DX licenses, the Board found the KCA's and RCNA's arguments for other license restrictions to not be warranted in other areas. First, the Board recognizes that the written petition filed by the KCA and RCNA specifically requests an exception to allow the issuance of new class B licenses for full service grocery stores that meet the requirements promulgated under D.C. Official Code §§ 25-303(c), 25-332(c), or 25-333(c) (2001), in an effort to allow full service grocery stores such as Harris Teeter and Safeway to locate and/or operate in the Adams Morgan Moratorium Zone with a class B license. However, the Board found, based upon the testimony submitted and the lack of evidence presented by the KCA and RCNA to the contrary, that new retailer's licenses class A and B should be excluded from the moratorium extension. Specifically, the Board found based upon the testimony and evidence presented, including by supporters of the moratorium petition, that including a prohibition on the issuance of new class A and other class B licenses to establishments is not appropriate as the aforementioned problems with peace, order, and quiet and vehicular and pedestrian safety within the current Adams Morgan Moratorium Zone primarily occur after 10 p.m., during which times class A and class B establishments are legally required to close. Rather, the testimony revealed that the primary concern of the KCA and RCNA was with the late night, after 10 p.m., peace, order, and quiet, and vehicular and pedestrian safety problems caused by patrons of class C and class D establishments. Second, while the KCA and RCNA established a need to place some

limits on the number of new late-night drinking establishments, based upon the reasons set forth above, the Board did not agree with the KCA's and RCNA's overconcentration argument – a consideration under D.C. Official Code § 25-314(a)(4) (2001) – as the Board also found merit in the testimony and comments it received regarding the need for new class CR restaurants – in addition to class DR restaurants which were not requested in the KCA's and RCNA's petition – in the Adams Morgan Moratorium Zone. Specifically, the Board found based upon the testimony and comments submitted by Councilmember Graham, the Coalition of Concerned Adams Morgan Commercial Property Owners, the AMCA, and the Coalition of Latino Business, as well as individual residents of Adams Morgan that there is a need for additional class CR restaurants within the Adams Morgan Moratorium Zone to spur commercial development and occupancy, to facilitate diversity, and to address the needs of a growing residential population in Adams Morgan. The Board found this restaurant exception also to be consistent in giving great weight to ANC 1C with its comments regarding the need to promote desirable retail uses in the community. As a result, the Board has excluded a prohibition on class CR restaurants from this rulemaking. However, to ensure that newly issued restaurant licenses are not able to circumvent the prohibition on the issuance of any new class CN, CT, CX, DN, DT, and DX licenses, the Board is prohibiting any new class CR or class DR license issued within the Adams Morgan Moratorium Zone from changing its license class to a class CN, CT, CX, DN, DT, or DX, for the duration of the moratorium period. It should be noted that although the issue of restaurants applying for entertainment endorsements was raised in Councilmember Graham's testimony, the existence of entertainment endorsements have not yet been enacted into law. However, the Board does note that it is seriously concerned about new restaurants obtaining entertainment endorsements without close community scrutiny and will be treating any such application as a substantial change. Third, the Board did not find the testimony or evidence it received to warrant either the prohibition on lateral expansion of the service or sale of alcoholic beverages into any adjoining or adjacent space, property, or lot, or the placement of any cap on the number of permitted class CT, CN, or DN licenses, as was requested by the petitioners. Specifically, the Board received testimony and comment in opposition to such changes, including from ANC 1C, and also received testimony from Councilmember Graham supporting license changes from restaurants to taverns.

The Board decided to change the geographical boundaries of the Adams Morgan Moratorium Zone in accordance with the boundaries described in the written petition of the KCA and the RCNA. The Board notes that changing the geographical boundaries of the Adams Morgan Moratorium Zone was necessary in order to clarify the street boundaries of the Adams Morgan Moratorium Zone subsequent to the District of Columbia's redistricting after the year 2000 census. The Board decided in favor of a three (3) year moratorium instead of the five (5) year moratorium period sought by the petitioners. Testimony and comments submitted by the petitioners, Councilmember Graham, ANC 1C, business associations, community organizations, and individual residents revealed that while problems with criminal activity, litter, noise, parking, and vehicular and pedestrian safety still exist in the Adams Morgan Moratorium Zone to justify the moratorium extension, these problems may begin to improve in the future with the formation of a Business Improvement District and are worth re-examining at the end

of the three year moratorium period. The statements set forth above reflect the written reasons for the Board's decision as required by subsection 303.1 of Title 23 DCMR (2004).

Pursuant to D.C. Official Code § 25-211(b)(2) (2001), the proposed rules were transmitted to the Council of the District of Columbia ("Council") for a forty-five (45) day period of review on September 20, 2004, as Proposed Resolution 15-1044, the Adams Morgan Liquor License Moratorium Approval Resolution of 2004. The forty-five (45) day period of review expired on November 20, 2004 with no action taken which resulted in the rulemaking being deemed approved by the Council. These final rules will become effective five (5) days after being published in the D.C. Register.

Title 23 DCMR, Chapter 3 (Limitations on Licenses), is amended by replacing the existing section 304 to read as follows:

304 ADAMS MORGAN MORATORIUM ZONE

304.1 No new Retailer's License Class CN, CT, CX, DN, DT, or DX shall be issued for a period of three (3) years from the effective date of this section in the area that extends approximately fourteen (1400) hundred feet in all directions from the intersection of 18th Street and Belmont Road, N.W., Washington D.C. This area shall be known as the Adams Morgan Moratorium Zone.

304.2 The Adams Morgan Moratorium Zone is more specifically described as beginning at 18th Street and Vernon Street, NW ; and proceeding on both sides of all streets, unless otherwise noted; West on Vernon Street to 19th Street; Northwest on 19th Street to Wyoming Avenue; Southwest on Wyoming Avenue to 20th Street; Northwest on 20th Street to Belmont Road; East on Belmont Road to 19th Street; Northwest on 19th Street to Biltmore Street; East on Biltmore Street to Cliffbourne Street; North on Cliffbourne Street to Calvert Street; East on Calvert Street to Lanier Place; Northeast on Lanier Place to Adams Mill Road; Southeast on Adams Mill Road to Columbia Road; Northeast on Columbia Road to Ontario Road; South on Ontario Road to Euclid Street; East on Euclid Street to 17th Street; South on 17th Street to Kalorama Road; Southwest on Kalorama Road to Ontario Road; South on Ontario Road to Florida Avenue; Southwest on Florida Avenue to U Street; West on U Street (North side only); across 18th Street to the South corner of 18th and Vernon Streets, N.W., Washington D.C.

304.3 The following license classes shall be exempt from the Adams Morgan Moratorium Zone:

- (a) All hotels, whether present or future;
- (b) Restaurants applying for new Retailer's licenses Class CR and DR;
and

(c) Retailer's licenses Class A and B

- 304.4 Any new Retailer's licenses Class CR or DR issued during the moratorium period within the Adams Morgan Moratorium Zone shall be prohibited from changing its license class to a Class CN, CT, CX, DN, DT, or DX.
- 304.5 Nothing in this section shall prohibit the Board from approving the transfer of ownership of a retailer's license Class CN, CT, CX, DN, DT, and DX within the Adams Morgan Moratorium Zone that was in effect or for which an application was pending prior to the effective date of this section, subject to the requirements of Title 25 of the D.C. Official Code and this title.
- 304.6 Nothing in this section shall prohibit the Board from approving the transfer of a license from a location within the Adams Morgan Moratorium Zone to a new location within the Adams Morgan Moratorium Zone.
- 304.7 A license holder outside the Adams Morgan Moratorium Zone shall not be permitted to transfer its license to a location within the Adams Morgan Moratorium Zone, unless exempt by section 304.3.
- 304.8 Nothing in this section shall prohibit a valid protest of any transfer or change of a license class.
- 304.9 The moratorium shall have a prospective effect and shall not apply to any license granted prior to the effective date of this section or to any application for licensure pending on the effective date of this section.
- 304.10 This section shall expire three (3) years after the date of publication of the notice of final rulemaking.